

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

4

DECISION

TOPIC

**Contract – Williams and Company, CPA, P.C. – Onsite Wastewater
Assistance Program Financial Agent**

The Environmental Protection Commission is requested to approve the extension of the agreement between the Department and Williams and Company, CPA, P.C. as the “Onsite Wastewater Assistance Fund (OSWAF) Financial Agent.” The contract initially signed in April of 2002, expires on March 31, 2007. The contract will be extended by mutual agreement for the period from April 1, 2007 to June 30, 2007. After this period, the financial agent for OSWAF will become the Iowa Finance Authority. This is an effort to consolidate operation of the State Revolving Fund in one location. This extension was requested by the contractor to avoid a transistion period during tax season.

This is a contract for a CPA agency to manage the distribution and collection of funds for the onsite wastewater revolving loan program. The agency is paid a monthly stipend, an amount per loan issued, a hourly operating account management fee, out of pocket costs and a bond premium. The total maximum not-to-exceed amount for the three month period of this contract extension will be \$12,546.25.

In the first five years of this contract, approximately 542 loans have been made to individuals for the upgrading of their private sewer systems. These loans have averaged \$6,300 per loan. The loans are through local banks for a period of ten years at a 3% interest rate. We anticipate making about 40 - 60 loans during this grant extension. We plan to initiate additional promotional programs to encourage the use of this revolving loan fund.

Williams and Company has done a excellent job with this program. We have not only been satisfied, but have received nothing but positive comments from other stakeholders. There is no proposal to alter payment rates, however, based on the short time period of the extension, changes have been made in the volume of business parameters. The Project Officer is Daniel Olson, Environmental Specialist, Wasetwater Operations Section, and the contract effect date will be April 1, 2007 to June 30, 2007.

Charles C. Corell
Chief, Water Quality Bureau
Environmental Services Division

IOWA DEPARTMENT OF NATURAL RESOURCES

Amendment # 2 to
AGREEMENT #02-7121-01
With
Williams and Company, CPA, P. C.

Agreement Title: **Onsite Wastewater Assistance Fund (OSWAF)**
Financial Agent

Agreement Amount:
Varies depending upon loan activity,
to a projected maximum of \$12,546.25.00

Time of Performance:
April 1, 2007,-June 30, 2007

Contractor Name:
Williams and Company, CPA, P.C.
Project Officer:
Larry Harden, CPA

Department of Natural Resources
Project Officer: Daniel Olson
Environmental Specialist
Wastewater Operations (NPDES)
Section

Submit Original Invoice and two copies to:
Daniel Olson
Department of Natural Resources
Wastewater Operations (NPDES) Section 401 SW 7th St.
Des Moines, IA 50309-4611

Issue Payment to: Williams and Company, CPA, P.C.
20 W. 6th Street
P. O. Box 908
Spencer, IA 51301

Williams and Company, CPA, P.C. entered into an agreement with the Iowa Department of Natural Resources in March 2002 to act as the financial agent for the Onsite Wastewater Assistance Fund. Williams and Company, CPA, P.C. manages the operating account into which funds from the OSWAF are deposited and from which the funds are transferred to local lending institutions. The original agreement was from April 1, 2002, through March 31, 2005, and the payment amount was not to exceed \$229,350.00. The original agreement contained a provision that the agreement could be extended indefinitely for two-year intervals beyond the original contract period, if mutually agreed upon. The first amendment to the original agreement was from April 1, 2005, through March 31, 2007, and the payment amount was not to exceed \$100,370.00. This amendment is the second amendment to the original contract.

IN WITNESS THEREOF, the parties hereto have made and executed this AGREEMENT on the day and year last specified below.

CONTRACTOR

DEPARTMENT OF NATURAL RESOURCES

By: _____
Name, title

By: _____
Elizabeth Christiansen, Deputy Director

Date: _____

Date: _____

This agreement amendment was approved, as required by Subsection 455B.105(7) of the Code of Iowa, by the Environmental Protection Commission on March 6, 2007.

SPECIAL CONDITIONS

ARTICLE I – IDENTIFICATION OF PARTIES

The "Department" means the Iowa Department of Natural Resources, Wastewater Operations (NPDES) Section, or any designated representative of the Iowa Department of Natural Resources for this program.

The "Contractor" means Williams and Company, CPA, P.C., 20 W. 6th Street, P. O. Box 908, Spencer, Iowa, or any designated representative of the company for this program.

ARTICLE II – STATEMENT OF PURPOSE

The purpose of this contract is to establish the conditions of the agreement between the Department and the Contractor for the work required of the financial agent of the Onsite Wastewater Assistance Fund (OSWAF). The fund was established to provide financial assistance as specified by 567 Iowa Administrative Code Chapter 93, the "Onsite Wastewater Treatment System Assistance Program".

ARTICLE III – STATEMENT OF WORK

The Contractor shall be responsible for reserving funds equal to the amount of each loan approved by a local lending institution and for requesting the transfer of those reserved funds from the Onsite Wastewater Assistance Fund (OSWAF) to local lending institutions. To execute this flow of funds, the Contractor shall manage an operating account into which funds from the OSWAF shall be deposited and from which funds will be transferred to local lending institutions. The Contractor will be compensated for managing the operating account by submitting monthly invoices to the Department.

The operating account shall be a liquid account (such as a money market account) not to exceed a balance of \$100,000 at any one time. Interest earned on this account shall remain in the account. As the account is drawn down, the Contractor will be able to replenish the operating account by requesting periodic draws from the OSWAF as needed, not more frequently than twice per month. As repayments from local lenders return to the operating account, the Contractor shall anticipate when the operating account may exceed the \$100,000 cap and make repayments to the Department before the cap is exceeded. All requests for periodic draws or repayments from the operating account are to be made through the Department's Budget and Finance Bureau. Notification of the amount and anticipated date of any repayment shall be made at least three (3) days in advance.

The Contractor shall also:

- a) Maintain for public record a list of participating lending institutions, including name, address, phone number, and name of a contact person for each institution.
- b) Receive and account for annual principal repayments from lenders.
- c) Maintain certain information about each loan and original and outstanding loan account balances, and make such information available to the Department upon request through a computer format mutually negotiated and agreed upon between the Department and the Contractor.
- d) Follow up on delinquent loans by collecting any remaining amount of the loan from the lender for any defaulted loan and by reporting delinquent loans to the Department. The Contractor shall not be responsible for any collection activities with the borrower.
- e) Act as liaison between the Department and the lending institutions. This will include helping to market the loan program to local lending institutions and preparing the following monthly and quarterly reports for submittal to the Department:
 - monthly statement of operating account transactions, including daily balances
 - monthly reports indicating any loan activity during the previous month
 - quarterly update of annual loan balance information for each loan outstanding, its address and county, its outstanding principal balance and amount paid to date, and any other demographic information requested by the Department
 - any other reports at such times as may be required to satisfy the internal control procedures for reconciliation, and

- monthly list of delinquent loans.

f) Permit access to records and assist the Department, the EPA, and state auditors with periodic audits of the OSWAF, as required by the Department, the EPA, and state auditors..

ARTICLE IV – REPORTS AND PRODUCTS

All information, reports, studies, brochures, training manuals, object or source codes, flow charts, diagrams, computer software, computerized records, and other tangible and intangible material of any nature whatsoever purchased or developed under this contract, such as proprietary software, shall become the property of the Department and the Department shall have the right to reproduce and distribute the products without restriction, subject to any licensing restrictions on purchased software used to administer the program, provided that the Department's access to information or to any software conversions is not restricted. All reports and deliverables to the Department when the project is completed shall consist of two (2) proof copies suitable for reproduction and a master computer diskette containing the final report, training manual and any component databases in Microsoft Word format or other format acceptable to the Department. Upon completion of the total project, any final documents which will be used regularly in the future operations shall prominently display the Department logo and contain the notation that costs for the project came from funds provided by the Department and the U. S. Environmental Protection Agency. The Contractor shall have no rights or interest in any Developed Propriety Rights.

ARTICLE V – DESIGNATION OF OFFICIALS

- 5.1 Department – The Director of the department is the official authorized to execute any changes in the terms, conditions, or amounts specified in this agreement. Daniel Olson is designated to negotiate on behalf of the Department, and subject to the approval of the Director, any changes to this agreement.
- 5.2 Contractor--The Contractor's project managers for this project are the officials authorized to execute any changes in the terms, conditions, or amounts specified in this agreement. Larry Harden is designated to negotiate on behalf of the Contractor, and subject to the approval of the Contractor, any changes to this agreement.

ARTICLE VI – TIME OF PERFORMANCE

This agreement is for a three-month period, beginning on April 1, 2007, and ending on June 30, 2007. The Department may revoke this agreement at any time.

ARTICLE VII – ADDITIONAL SPECIAL CONDITIONS

Prior to contract execution, the Contractor shall be required to obtain a fidelity bond in the amount of \$100,000 covering any loss to the State due to any fraudulent or dishonest act on the part of the Contractor's officers, employees, agents, or subcontractors. Bonding fees required for this program are reimbursable expenses.

ARTICLE VIII – CONDITIONS OF PAYMENT

- 8.1 This agreement is entered into on a cost reimbursable, stated maximum basis. The Contractor shall be reimbursed according to the reimbursement schedule and up to the contract maximum listed in Article IX. For each payment made under this contract, the Contractor shall submit an invoice to the Department. The State fiscal year ends June 30 and invoices must not cross fiscal years.

- 8.2 Upon final signature of the contract, and as needed thereafter, the Contractor may request payment of the eligible expenses of the project. The frequency with which payment requests are submitted and the amount of each request shall be determined by the Department based on Article IX and the payments policies of the Department of Finance and Revenue.

ARTICLE IX – CONTRACT PAYMENT SCHEDULE

PROGRAM COSTS:

<u>1. Per loan fee</u>	<u>\$ 100.00 per loan (one-time loan fee)</u>
<u>2. Monthly fee to complete reports and loan balances</u>	<u>\$1,500.00 per month</u>
<u>3. Hourly fee to manage operating account</u>	<u>\$ 100.00 per hour (2-3 hours per month estimated)</u>
<u>4. Three-month bond premium</u>	<u>\$ 530.00</u>
<u>5. Annual direct costs for postage, mileage, printing, and marketing</u>	<u>Not to exceed \$250.00 per year</u>

The maximum number of loans allowed per year under this contract is 63 loans.

MAXIMUM AMOUNT:

The contract is for the amounts stated above, up to a maximum amount of \$12,546.25.00 over the three-month contract extension (amendment) period. The Department's project manager may approve additional expenditures prior to the expenses being incurred by the Contractor, such as but not limited to, work required for closing or transitioning to other contractors or the DNR. Allowable expenses are limited to the items specifically listed above.

The contract's "Direct costs" are not to exceed \$5,000.00 per year. Any changes to this maximum amount need to be mutually agreed upon in writing prior any additional expenses being incurred by the Contractor.

FREQUENCY OF BILLING:

The Contractor shall submit monthly invoices to the Department for expenses incurred for this program, unless it is mutually agreed upon to submit invoices less frequently than monthly.

GENERAL CONDITIONS

Section 1.0 Entire Agreement

This agreement constitutes the entire agreement between the Department and the Contractor with respect to the subject matter hereof, and the Contractor acknowledges that it is entering into the contract solely on the basis of the terms and conditions herein contained and not in reliance on any representation, statement, inducement or promise, whether oral or written, not contained herein.

Section 2.0 Amendment

In order to be valid, any amendment of this contract, or change in the conditions or terms of this contract must be in writing and signed by officials designated in Article V of this contract.

Section 3.0 Availability of Funds

If funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the Federal Government or of the State of Iowa to appropriate funds, funding from a federal source is reduced or discontinued for any reason or discontinuance or material alteration of the program under which funds were provided, the Department shall have the right to terminate this contract without penalty in accordance with Section 6.1 of the General Conditions by giving not less than thirty (30) days written notice documenting the lack of funding. The Contractor will be compensated for all contracted work performed prior to the effective date of discontinuance.

Section 4.0 Records

- 4.1 The Contractor agrees to maintain books, documents and other records pertaining to all costs and expenses incurred and revenues acquired during this contract in accordance with generally accepted accounting principles and practices consistently applied.
- 4.2 The Contractor shall also maintain the financial information and data used in the preparation or support of the cost submission for this contract.
- 4.3 The Director of the Department or any duly authorized audit representative thereof shall have access for the purpose examining of any books, documents, papers and records of the Contractor which are pertinent at all reasonable times during the period of retention provided for in paragraphs 4.4, 4.5, and 4.6 below and shall have the right to make copies or to excerpt or make other transcriptions thereof. Access to records is not limited to the required retention periods. The Department or its representatives shall have access to records at any reasonable time for as long as the records are maintained.
- 4.4 All records in the possession of the Contractor pertaining to this contract shall be retained by the Contractor for a period of three (3) years beginning with the date upon which the final payment under this contract is issued. Records for non-expendable property acquired under this contract shall be retained for a three-year period after the final disposition of the property.
- 4.5 Records relating to any litigation or claim arising out of the performance of this contract, or costs or expenses of this contract to which exception has been taken as a result of inspection shall be retained by the Contractor until such litigation, claim, or exception has been finally settled or until the three-year period has expired, whichever occurs later.
- 4.6 The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments resulting from any administrative reviews and audits by the United States or by the State of Iowa or by the Contractor.
- 4.7 Funding for this contract is made available under Catalog of Federal Domestic Assistance No. 66.458.

Section 5.0 Allowable Costs

Allowable costs are specified under the approved budget presented in the Special Conditions of this contract. Allowable costs in contracts with public or non-public agencies are subject to the cost principles defined in Office of Management and Budget Circular A-87 as amended.

Section 6.0 Termination of Contract

- 6.1 Termination for cause. The Department may terminate this contract in whole or in part, at any time before the date of completion, whenever it is determined that the Contractor has failed to comply with the condition of the contract or if funds totaling the amount specified in Article IX are not available to the Department. Before any termination, the Director shall provide the Contractor an opportunity for consultation. The Department shall notify the Contractor in writing of any termination. The notice shall state the reasons for the termination. The Contractor must stop work immediately upon notification of

termination. The Department will not provide any reimbursement for new commitments after the notice of termination. Payments made to Contractor or recoveries by the Department under contracts terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

- 6.2 Termination for convenience. The Department or the Contractor may terminate the contract in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date, and, in the case of partial obligations, for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the Contractor for the Department's share of the noncancelable obligations, properly incurred by the Contractor prior to termination. The termination agreement must be in writing and signed by the officials designated in Article V of the Special Conditions.
- 6.3 Rights in uncompleted products. In the event the contract is terminated, all finished or unfinished documents, data, reports or other materials prepared by the Contractor under this contract shall, at the option of the Department, become the Department's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Section 7.0 Equal Employment Opportunity

- 7.1 The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, or mental or physical disability. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, sex, national origin, age or mental or physical disability except where mental or physical disability relates to a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor's business. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth provisions of the nondiscrimination clause.
- 7.2 The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, national origin, age, or mental or physical disability except where mental or physical ability is a bona fide occupation qualification reasonably necessary to the normal operation of the Contractor's business.
- 7.3 The Contractor will comply with all relevant provisions of the Iowa Civil Rights Act of 1965 as amended, Iowa Executive Order 15 of 1973, Chapter 19B, Code of Iowa, Federal Executive Order 11246 of 1965 as amended by Federal Executive Order 11376 of 1967 and Title VI of the Civil Rights Act of 1964 as amended. The Contractor will furnish all information and reports requested by the State of Iowa or required by, or pursuant to, the rules and regulations thereof and will permit access to payroll and employment records by the State of Iowa for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.
- 7.4 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the aforesaid rules, regulations or requests, this contract may be canceled, terminated or suspended in whole or in part. In addition, the State of Iowa may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act of 1965 as amended, Chapter 601A, Code of Iowa, or as otherwise provided by law.
- 7.5 The Contractor will include the provisions of paragraphs 7.1 through 7.4 hereof in every subcontract, unless specifically exempted by approval of the State of Iowa, so that such provisions will be binding on each subcontract. The Contractor will take such action with respect to any subcontract as the State of Iowa may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a

subcontractor or vendor as a result of such direction by the State of Iowa, the Contractor may request the State of Iowa to enter into such litigation to protect the interests of the State of Iowa.

Section 8.0 Indemnification

The Contractor shall be responsible and agrees to pay for any and all claims for wrongful death, personal injury, or property damage incurred by reason of the negligence of the Contractor or its employees arising from activities under this agreement to the full extent permitted by Chapter 669, Code of Iowa, which is the exclusive remedy for processing of tort claims against the State of Iowa.

Section 9.0 Compliance with Laws

The Contractor agrees that over the duration of and as a condition of the Contractor's duty to perform under the terms of this contract, that it will be in compliance with all applicable laws and regulations of the state and federal government, including, but not limited to Equal Employment Opportunity provisions, Occupational Health and Safety Act, records retention, audit requirements, allowable costs, and 40 CFR.

The Contractor certifies that it is not on EPA's List of Violating Facilities as listed in 40 CFR Part 15 and that it has not been debarred, suspended, or otherwise excluded from receiving federal funds by any agency of the U.S. government.

Section 10.0 Debarment and Suspension

- 10.1 The Contractor hereby certifies that to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or Agency.
- 10.2 The Contractor acknowledges that doing business with any party appearing on the nonprocurement portion of the "List of Parties Excluded from Federal Procurement Programs" may result in disallowance of costs under this agreement and may also result in suspension or debarment.

Section 11.0 Minority and Women's Business Utilization

The contractor agrees to include the six affirmative steps in 40 CFR 31.36(e) in any solicitation documents for subcontracting supplies and services under this agreement to assure that minority and women's businesses are used when possible. The contractor will submit EPA Form 5700-52A to DNR to report the utilization of such businesses.

Section 12. Independent Contractor

Contractor is an independent contractor performing services for the department. Contractor shall not hold itself out as an employee or agent of the department. The department shall not provide Contractor with office space, support staff, equipment or tools, or supervision beyond the terms of this agreement. Neither Contractor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Contractor and its staff shall not be considered employees of the department or the State for federal or State tax purposes. The department shall not withhold taxes on behalf of Contractor, unless required by law. Contractor shall be responsible for payment of all taxes in connection with any income earned from performing this agreement.